

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	2:06-cr-00211
)	
v.)	
)	
JASON HARVEY,)	
)	
Defendant.)	

MEMORANDUM ORDER

Pending before the Court is Defendant's NOTICE OF MOTION FOR AN ORDER GRANTING A SENTENCE REDUCTION (Document No. 44), which was filed by Harvey pro se.¹ In essence, Defendant requests a reduction in his sentence as a result of the amendments to the United States Sentencing Guidelines for offenses involving cocaine base, in the form commonly known as crack cocaine.

At Criminal Information No. 07-186, Mr. Harvey was charged with two offenses: (Count 1) possession of a firearm by a convicted felon; and (Count 2) possession of crack cocaine. On May 18, 2007, Harvey waived indictment and pled guilty to Count 1. At the sentencing proceeding on August 17, 2007, the Court granted the government's motion to dismiss Count 2, which involved crack cocaine. The 2007 amendments to the sentencing guidelines do not affect the calculation for the crime of possession of a firearm by a convicted felon, and therefore, the amendments do not apply to the conviction or sentence of Mr. Harvey at Criminal No. 07-186.

¹This motion is substantially identical to the motion filed by Harvey at Criminal No. 07-186. The Court's Memorandum Order is also substantially identical.

The Court is aware that Mr. Harvey is also serving a sentence imposed at Criminal No. 06-211. During the same proceeding on May 18, 2007 referenced above, Harvey also pled guilty to the 1-count indictment at Criminal No. 06-211, which charged him with possession with intent to distribute five grams or more of cocaine base. The 2007 Amendments to the Sentencing Guidelines would ordinarily be applicable to this offense. However, on August 17, 2007, Harvey was sentenced to 120 months imprisonment, which was the statutory mandatory minimum term of imprisonment established by Congress for that offense. Thus, the Court has already sentenced Mr. Harvey to the shortest possible term of imprisonment permitted under the statute. The 2007 guideline amendments do not permit the Court to impose a sentence below the statutory minimum requirement. USSG § 5G1.1. Accordingly, Defendant's NOTICE OF MOTION FOR AN ORDER GRANTING A SENTENCE REDUCTION (Document No. 8) is **DENIED.**²

SO ORDERED this 23rd day of April, 2008.

BY THE COURT:

s/ Terrence F. McVerry
United States District Court Judge

²The Court applauds Defendant's efforts at rehabilitation through gainful employment and educational courses at FCI-Loretto.

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